Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1256 of 2001 (S/S)
Old no.43741/2000

Surat Singh, S/o Shri Madan Singh Negi,
R/o Project Colony, Yamuna Nagar,
Dehradun. …… Petitioner

Versus

State of U.P. through Secretary,
Irrigation Department, U.P. & others …… Respondents

&

Writ Petition No. 32 of 2001 (S/S)

Mahaprashad, S/o Shri Haridwar,
R/o C/o Bharmapal Singh,
D/T 17 Yamuna Colony,
Dehradun. …… Petitioner

Versus

State of Uttaranchal through Secretary,
Irrigation & others …… Respondents

Mr. M.C. Pant, learned counsel for the petitioners.
Mr. B.D. Kandpal, learned Standing Counsel for the State.

Hon'ble P.C. Pant, J.

1. Since, in both the writ petitions, common questions of law and facts are involved, therefore, these are being disposed of by this common judgment.

2. These two writ petitions have been moved under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to restrain from interfering in the functioning of both the petitioners as Chaukidars and also for quashing of the orders/ notices dated 4.12.2000 (in writ petition No. 32 of 2001) and 17.8.2000 (in writ petition No. 1256 of 2001), retiring both the petitioners at the age of 58 years.

3. Brief facts giving rise to the above writ petitions are that petitioner, namely, Surat Singh was initially inducted in service as Beldar (Class IV Category) in the pay scale of 165-185 on 1.7.1969 in the work charge in the establishment of Irrigation Department, while the petitioner Mahaprashad was inducted in service as Chaukidar (Class IV Category) in the pay scale of Rs. 340-360-390 w.e.f. 16.8.1980 in the work charge in the same establishment. The date of birth of the petitioner Surat Singh, as per the service record, is 5.12.1943 while that of petitioner Mahaprashad is 13.5.1943, as such, they would have retired at the age of 60 years on 5.01.2003 and 31.5.2001 respectively. Both the petitioners are working continuously from the date of their initial induction. Though the nature of their job was temporary, but they continuously worked to the satisfaction of the officers of the Department. Petitioner Surat Singh was appointed against a substantive post of Chaukidar (Class IV employees) in the pay scale of 340-390 and after the revision of the pay scale, the revised pay scale of the said post w.e.f. 1.1.1986 is Rs. 750-940. The services of the petitioner Surat Singh were regularised as Class IV employee w.e.f. 6.06.1997 while that of petitioner Mahaprashad were regularised w.e.f. 15.11.1997, both the petitioners were subsequently confirmed in the Irrigation Department. The retirement age of the work charge employees was 60 years as is clear from Annexure 3 to the writ petition No. 1256 of 2001 and Annexure 2 to the writ petition No. 32 of 2001. Both the petitioners have been served with the notices from the respondents for retiring them at the age of 58 years as they have been regularised after 5.11.1985. In both the writ petitions, it has been challenged that they cannot be treated to be appointee after the cut-off date of 5.11.1985 merely for the reason that they have been regularised thereafter.

4. Respondents No. 1 to 4 have contested the writ petitions and filed their counter affidavits in both the writ petitions. It is admitted that the petitioners were work charge employees from the dates shown in their respective writ petitions. There is no dispute as to the dates of

birth of the petitioners. As per the Government Order dated 20.7.1987, only those Class IV employees who were appointed prior to 5.11.1985 are entitled to retire at the age of 60 years, as such, those appointed thereafter, had to retire at the age of 58 years. It is further stated in the counter affidavits that prior to their regularisation, the petitioners were not Chaukidars on the substantive posts. As such, the notices issued to the petitioners are contended to be valid and according to the law.

5. I have heard learned counsel for the parties at length and perused the relevant papers on record.

6. U.P. Fundamental (First Amendment) Rules, 1987 (applicable in Uttaranchal) have been notified on 20.7.1987, whereby the Rule 56 of the Financial Hand Book, Para 2 Volume II has been amended w.e.f. 5.11.1985. According to the said amendment, the employees of Class IV Category will retire at the age of 58 years except those who have been appointed prior to 5.11.1985, for whom, the retirement age has been fixed to be 60 years. A copy of the said Notification is annexed as Annexure CA to the counter affidavit in writ petition No. 1256 of 2001.

7. As per the Office Memorandum dated 14th November, 1996 issued by the Irrigation Department, Government of U.P. (applicable in Uttaranchal) the work charge employees having pay scale of Rs. 750-940 will retire at the age of 60 years, if they have been appointed prior to 5.11.1985 and others at the age of 58 years. A copy of the said Office Memorandum issued by the Chief Engineer is annexed as Annexure CA2 to the counter affidavit in writ petition No. 1256 of 2001.

8. The sole question arises for consideration before this Court is that whether the word “recruitment” mentioned in the aforesaid Notification, whereby Fundamental Rule 56 was amended, refers only to the regularisation of the petitioners or it includes appointment as work charge also. Learned counsel for the petitioners submitted that

the word “recruitment” does not refer to the regularisation while the learned counsel for the respondents argued that since before regularisation, the petitioners were holding the post of work charge, as such, they cannot be said to have been recruited as Government Servants prior to their regularisation.

9. Looking into the Annexure 1 (in writ petition No. 1256 of 2001), which is Office Memorandum dated 24.2.1999, it is very clear that the petitioner, namely, Surat Singh was appointed as Chaukidar w.e.f. 1.07.1969 on work charge basis in the pay scale of Rs. 750-940. Also, Annexure 2(in writ petition No. 32 of 2001) and Annexure 3 (in writ petition No. 1256 of 2001, which contains the copy of the Office Memorandum dated 14.11.1996 issued by the office of the Chief Engineer, Irrigation Department, clearly shows that the work charge employees were on the pay scale of Rs. 750-940 and were to retire at the age of 60 years. These documents suggest that the petitioners were not like casual labourers having any fixed wage for a day. Rather, they were on a particular scale of pay though known to be work charge employees as their services were liable to be terminated if the work or the project comes to an end. Unlike casual labourers, as per the documents as mentioned above, retirement age of the work charge employees has been fixed even for those who have not been regularised. As such, in my considered view, the petitioners cannot be treated to have been recruited from the date of regularisation for the purpose of Fundamental Rule 56 of the Financial Hand Book, Part 2 Volume II.

10. Learned counsel for the respondents further argued that the petitioners have failed to challenge the virus of the amended Rules of 1987 and, as such, the same, whether right or wrong, applies with full force against the petitioners. In reply to this argument, learned counsel for the petitioners contended that there was no need to get quashed the Rule as the word “recruitment” is being wrongly interpreted by the respondents.

11. I am in full agreement with the contention of the learned counsel for the petitioners as the word “recritment” does not mean “regularisation” particularly for the purpose of workmen, who had their own pay scale and the retirement age. They shall be treated to be appointed prior to 5.11.1985 for the purpose of Fundamental Rule 56 as amended vide U.P. Fundamental (First Amendment) Rules, 1987.

12. Therefore, for the reasons as discussed above, the notices of retirement issued against the petitioners for retiring them at the age of 58 years are liable to be quashed.

13. Accordingly, both the writ petitions are allowed. The notices dated 4.12.2000 (in writ petition No. 32 of 2001) and 17.8.2000 (in writ petition No. 1256 of 2001) issued to the petitioners, for retiring them at the age of 58 years are, hereby, quashed. Both the petitioners shall be treated to have been retired at the age of 60 years. Respondents shall pay the entire arrears of salary and post-retiral benefits treating them to be in service between the age of 58 years to 60 years.

(P.C. Pant, J.)

Dt: 26th July 2004
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